

MT LEGISLATIVE HISTORY

Year ch 395, 1999

Bill # HB 201

Original bill & hist. ✓ c

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) c

1/15 ✓ c

 c

4/25 ✓ c

Hearing Date(s) c

3/11 ✓ c

 c

3/17 — c

Date Out 4/25 c

Date Out 3/17 ✓ c

Did this bill originate in an interim committee? Yes No

Committee

Minutes

Report

4/15 Returned from Enrolling
 4/16 Signed by Speaker
 4/16 Signed by President
 4/16 Transmitted to Governor
 4/21 Signed by Governor
 4/22 Chapter Number Assigned
 Chapter Number 394
 Effective Date: 7/01/1999 - All Sections

HB 208 Introduced by R. Johnson *LC0298 Drafter: MacMaster*

Prohibit Passengers in the Beds of Pickup Trucks and on Open Bed Trucks;...

1/05 Introduced and 1st Reading
 1/05 Referred to Transportation
 1/13 Hearing
 1/18 Tabled in Committee
 3/01 Missed Deadline for General Bill Transmittal

HB 209 Introduced by Shockley *LC0953 Drafter: MacMaster*

Specifically Provide for a Plea of Nolo Contendere in a Criminal Prosecution;...

1/05	Introduced and 1st Reading		
1/05	Referred to Judiciary		
1/15	Hearing		
1/25	Committee Executive Action--Bill Passed as Amended	16	4
1/26	Committee Report--Bill Passed as Amended		
1/28	2nd Reading Passed	91	8
1/29	3rd Reading Passed	90	7
	Transmitted to Senate		
1/30	Referred to Judiciary		
3/11	Hearing		
3/17	Committee Executive Action--Bill Concurred as Amended	8	1
3/18	Committee Report--Bill Concurred as Amended		
3/19	2nd Reading Concurred	44	0
3/20	3rd Reading Concurred	42	0
	Returned to House with Amendments		
4/10	2nd Reading Senate Amendments Concurred	97	2
4/12	3rd Reading Passed as Amended by Senate	93	5
4/12	Sent to Enrolling		
4/14	Returned from Enrolling		
4/14	Signed by Speaker		
4/15	Signed by President		
4/16	Transmitted to Governor		
4/21	Signed by Governor		
4/22	Chapter Number Assigned		
	Chapter Number 395		
	Effective Date: 10/01/1999 - All Sections		

HB 210 Introduced by R. Johnson *LC0422 Drafter: B. Campbell*

Allow Inclusion of Class Eight Property in the Debt Limit for Various Cultural, Social, and Recreational Purposes;...

11/04 Fiscal Note Needed

1
2 INTRODUCED BY

3 (Primary Sponsor)

H BILL NO. 209
J. G. Shockey

4 A BILL FOR AN ACT ENTITLED: "AN ACT SPECIFICALLY PROVIDING FOR A PLEA OF NOLO
5 CONTENDERE IN A CRIMINAL PROSECUTION; AND AMENDING SECTIONS 45-2-101, 45-5-222,
6 45-5-621, 45-8-212, 46-1-202, 46-12-201, 46-12-204, 46-12-210, 46-12-211, 46-12-212, 46-13-108,
7 46-13-109, 46-14-311, 46-16-103, 46-16-105, 46-17-203, 46-18-104, 46-18-201, 46-18-204,
8 46-18-231, 46-24-203, 53-30-303, 61-11-203, AND 87-1-112, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11
12 Section 1. Section 45-2-101, MCA, is amended to read:

13 "45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken
14 in the objective standard rather than in the subjective, and unless a different meaning plainly is required,
15 the following definitions apply in this title:

16 (1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of
17 communication, and when relevant, a failure or omission to take action.

18 (2) "Administrative proceeding" means any proceeding the outcome of which is required to be
19 based on a record or documentation prescribed by law or in which a law or a regulation is particularized
20 in its application to an individual.

21 (3) "Another" means a person or persons, as defined in this code, other than the offender.

22 (4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or
23 advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested.
24 Benefit does not include an advantage promised generally to a group or class of voters as a consequence
25 of public measures that a candidate engages to support or oppose.

26 (5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and
27 includes mental illness or impairment.

28 (6) "Cohabit" means to live together under the representation of being married.

29 (7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish
30 a single criminal objective or by a common purpose or plan that results in the repeated commission of the

1 same offense or that affects the same person or the same persons or the property of the same person
2 or persons.

3 (8) "Computer" means an electronic device that performs logical, arithmetic, and memory
4 functions by the manipulation of electronic or magnetic impulses and includes all input, output,
5 processing, storage, software, or communication facilities that are connected or related to that device
6 in a system or network.

7 (9) "Computer network" means the interconnection of communication systems between
8 computers or computers and remote terminals.

9 (10) "Computer program" means an instruction or statement or a series of instructions or
10 statements, in a form acceptable to a computer, that in actual or modified form permits the functioning
11 of a computer or computer system and causes it to perform specified functions.

12 (11) "Computer services" include but are not limited to computer time, data processing, and
13 storage functions.

14 (12) "Computer software" means a set of computer programs, procedures, and associated
15 documentation concerned with the operation of a computer system.

16 (13) "Computer system" means a set of related, connected, or unconnected devices, computer
17 software, or other related computer equipment.

18 (14) "Conduct" means an act or series of acts and the accompanying mental state.

19 (15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or
20 nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury
21 or by a court of competent jurisdiction authorized to try the case without a jury.

22 (16) "Correctional institution" means the state prison, county or city jail, or other institution for
23 the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for
24 offenses.

25 (17) "Deception" means knowingly to:

26 (a) create or confirm in another an impression that is false and that the offender does not believe
27 to be true;

28 (b) fail to correct a false impression that the offender previously has created or confirmed;

29 (c) prevent another from acquiring information pertinent to the disposition of the property
30 involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(23) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interested.

1 (27) A "house of prostitution" means any place where prostitution or promotion of prostitution
2 is regularly carried on by one or more persons under the control, management, or supervision of another.

3 (28) "Human being" means a person who has been born and is alive.

4 (29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being
5 in the possession of a person subject to official detention.

6 (30) "Inmate" means a person who engages in prostitution in or through the agency of a house
7 of prostitution.

8 (31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32,
9 and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of
10 alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid
11 produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1%
12 of alcohol by volume.

13 (32) An "involuntary act" means any act that is:

14 (a) a reflex or convulsion;

15 (b) a bodily movement during unconsciousness or sleep;

16 (c) conduct during hypnosis or resulting from hypnotic suggestion; or

17 (d) a bodily movement that otherwise is not a product of the effort or determination of the actor,
18 either conscious or habitual.

19 (33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by
20 any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury
21 in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned
22 to attend as a prospective juror.

23 (34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described
24 by a statute defining an offense when the person is aware of the person's own conduct or that the
25 circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute
26 defining an offense when the person is aware that it is highly probable that the result will be caused by
27 the person's conduct. When knowledge of the existence of a particular fact is an element of an offense,
28 knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such
29 as "knowing" or "with knowledge", have the same meaning.

30 (35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter

1 6.

2 (36) "Medicaid agency" has the meaning in 53-6-155.

3 (37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a
4 recipient under the medicaid program.

5 (38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic,
6 or other form:

7 (i) that is used to claim specific services or items as payable or reimbursable under the medicaid
8 program; or

9 (ii) that states income, expense, or other information that is or may be used to determine
10 entitlement to or the rate of payment under the medicaid program.

11 (b) The term includes any related documents submitted as a part of or in support of the claim.

12 (39) "Mentally defective" means that a person suffers from a mental disease or defect that
13 renders the person incapable of appreciating the nature of the person's own conduct.

14 (40) "Mentally incapacitated" means that a person is rendered temporarily incapable of
15 appreciating or controlling the person's own conduct as a result of the influence of an intoxicating
16 substance.

17 (41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is
18 imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is
19 imprisonment in the state prison for any term of 1 year or less.

20 (42) "Negligently"--a person acts negligently with respect to a result or to a circumstance
21 described by a statute defining an offense when the person consciously disregards a risk that the result
22 will occur or that the circumstance exists or when the person disregards a risk of which the person should
23 be aware that the result will occur or that the circumstance exists. The risk must be of a nature and
24 degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable
25 person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably
26 greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the
27 same meaning.

28 (43) "Obtain" means:

29 (a) in relation to property, to bring about a transfer of interest or possession, whether to the
30 offender or to another; and

1 (b) in relation to labor or services, to secure the performance of the labor or service.

2 (44) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the
3 sale, conveyance, or transfer of title to, interest in, or possession of property.

4 (45) "Occupied structure" means any building, vehicle, or other place suitable for human
5 occupancy or night lodging of persons or for carrying on business, whether or not a person is actually
6 present. Each unit of a building consisting of two or more units separately secured or occupied is a
7 separate occupied structure.

8 (46) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or
9 punished for a public offense.

10 (47) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is
11 authorized. Offenses are classified as felonies or misdemeanors.

12 (48) "Official detention" means imprisonment resulting from a conviction for an offense,
13 confinement for an offense, confinement of a person charged with an offense, detention by a peace
14 officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose
15 of the protection of the welfare of the person detained or for the protection of society. Official detention
16 does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful
17 arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to
18 escape.

19 (49) "Official proceeding" means a proceeding heard or that may be heard before any legislative,
20 judicial, administrative, or other governmental agency or official authorized to take evidence under oath,
21 including any referee, hearing examiner, commissioner, notary, or other person taking testimony or
22 deposition in connection with the proceeding.

23 (50) "Other state" means any state or territory of the United States, the District of Columbia, and
24 the Commonwealth of Puerto Rico.

25 (51) "Owner" means a person other than the offender who has possession of or any other interest
26 in the property involved, even though the interest or possession is unlawful, and without whose consent
27 the offender has no authority to exert control over the property.

28 (52) "Party official" means a person who holds an elective or appointive post in a political party
29 in the United States by virtue of which the person directs or conducts or participates in directing or
30 conducting party affairs at any level of responsibility.

1 (53) "Peace officer" means any person who by virtue of the person's office or public employment
2 is vested by law with a duty to maintain public order or to make arrests for offenses while acting within
3 the scope of the person's authority.

4 (54) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or
5 anything else the primary significance of which is economic gain.

6 (55) "Person" includes an individual, business association, partnership, corporation, government,
7 or other legal entity and an individual acting or purporting to act for or on behalf of any government or
8 subdivision of government.

9 (56) "Physically helpless" means that a person is unconscious or is otherwise physically unable
10 to communicate unwillingness to act.

11 (57) "Possession" is the knowing control of anything for a sufficient time to be able to terminate
12 control.

13 (58) "Premises" includes any type of structure or building and any real property.

14 (59) "Property" means any tangible or intangible thing of value. Property includes but is not limited
15 to:

16 (a) real estate;

17 (b) money;

18 (c) commercial instruments;

19 (d) admission or transportation tickets;

20 (e) written instruments that represent or embody rights concerning anything of value, including
21 labor or services, or that are otherwise of value to the owner;

22 (f) things growing on, affixed to, or found on land and things that are part of or affixed to any
23 building;

24 (g) electricity, gas, and water;

25 (h) birds, animals, and fish that ordinarily are kept in a state of confinement;

26 (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents,
27 blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models
28 thereof;

29 (j) any other articles, materials, devices, substances, and any whole or partial copies,
30 descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or

1 record secret scientific, technical, merchandising, production, or management information or a secret
2 designed process, procedure, formula, invention, or improvement; and

3 (k) electronic impulses, electronically processed or produced data or information, commercial
4 instruments, computer software or computer programs, in either machine- or human-readable form,
5 computer services, any other tangible or intangible item of value relating to a computer, computer system,
6 or computer network, and any copies thereof.

7 (60) "Property of another" means real or personal property in which a person other than the
8 offender has an interest that the offender has no authority to defeat or impair, even though the offender
9 may have an interest in the property.

10 (61) "Public place" means any place to which the public or any substantial group has access.

11 (62) "Public servant" means any officer or employee of government, including but not limited to
12 legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant,
13 administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The
14 term "public servant" includes one who has been elected or designated to become a public servant.

15 (63) "Purposely"--a person acts purposely with respect to a result or to conduct described by a
16 statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that
17 result. When a particular purpose is an element of an offense, the element is established although the
18 purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law
19 defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same
20 meaning.

21 (64) (a) "Serious bodily injury" means bodily injury that:

22 (i) creates a substantial risk of death;

23 (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or
24 process of any bodily member or organ; or

25 (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement
26 or protracted loss or impairment of the function or process of any bodily member or organ.

27 (b) The term includes serious mental illness or impairment.

28 (65) "Sexual contact" means any touching of the sexual or other intimate parts of the person of
29 another for the purpose of arousing or gratifying the sexual desire of either party.

30 (66) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the

1 penis of another person, penetration of the vulva or anus of one person by any body member of another
2 person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated
3 by another person for the purpose of arousing or gratifying the sexual desire of either party. Any
4 penetration, however slight, is sufficient.

5 (67) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise
6 another to commit an offense.

7 (68) "State" or "this state" means the state of Montana, all the land and water in respect to
8 which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the
9 land and water.

10 (69) "Statute" means any act of the legislature of this state.

11 (70) "Stolen property" means property over which control has been obtained by theft.

12 (71) A "stop" is the temporary detention of a person that results when a peace officer orders the
13 person to remain in the peace officer's presence.

14 (72) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted
15 alterations in its existing condition, or deposit refuse upon it.

16 (73) "Threat" means a menace, however communicated, to:

17 (a) inflict physical harm on the person threatened or any other person or on property;

18 (b) subject any person to physical confinement or restraint;

19 (c) commit any criminal offense;

20 (d) accuse any person of a criminal offense;

21 (e) expose any person to hatred, contempt, or ridicule;

22 (f) harm the credit or business repute of any person;

23 (g) reveal any information sought to be concealed by the person threatened;

24 (h) take action as an official against anyone or anything, withhold official action, or cause the
25 action or withholding;

26 (i) bring about or continue a strike, boycott, or other similar collective action if the person making
27 the threat demands or receives property that is not for the benefit of groups that the person purports to
28 represent; or

29 (j) testify or provide information or withhold testimony or information with respect to another's
30 legal claim or defense.

1 (74) (a) "Value" means the market value of the property at the time and place of the crime or, if
2 the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within
3 a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the
4 value must be determined as follows:

5 (i) The value of an instrument constituting an evidence of debt, such as a check, draft, or
6 promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of
7 the indebtedness less any portion of the indebtedness that has been satisfied.

8 (ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any
9 valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of
10 the instrument might reasonably suffer by virtue of the loss of the instrument.

11 (iii) The value of electronic impulses, electronically produced data or information, computer
12 software or programs, or any other tangible or intangible item relating to a computer, computer system,
13 or computer network is considered to be the amount of economic loss that the owner of the item might
14 reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss
15 includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition
16 of the item.

17 (b) When it cannot be determined if the value of the property is more or less than \$500 by the
18 standards set forth in subsection (74)(a), its value is considered to be an amount less than \$500.

19 (c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction,
20 whether from the same person or several persons, may be aggregated in determining the value of the
21 property.

22 (75) "Vehicle" means any device for transportation by land, water, or air or by mobile equipment,
23 with provision for transport of an operator.

24 (76) "Weapon" means any instrument, article, or substance that, regardless of its primary
25 function, is readily capable of being used to produce death or serious bodily injury.

26 (77) "Witness" means a person whose testimony is desired in any official proceeding, in any
27 investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

28
29 **Section 2.** Section 45-5-222, MCA, is amended to read:

30 **"45-5-222. Sentence enhancement -- offenses committed because of victim's race, creed,**

1 religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who
2 has pleaded guilty or nolo contendere to or who has been found guilty of any offense, except malicious
3 intimidation or harassment, that was committed because of the victim's race, creed, religion, color,
4 national origin, or involvement in civil rights or human rights activities or that involved damage,
5 destruction, or attempted destruction of a building regularly used for religious worship, in addition to the
6 punishment provided for commission of the offense, may be sentenced to a term of imprisonment of not
7 less than 2 years or more than 10 years, except as provided in 46-18-222.

8 (2) An additional sentence prescribed by subsection (1) shall run consecutively to the sentence,
9 except as provided in 46-18-222."

10
11 Section 3. Section 45-5-621, MCA, is amended to read:

12 "45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if the person fails to
13 provide support that the person can provide and that the person knows the person is legally obliged to
14 provide to a spouse, child, or other dependent.

15 (2) (a) A person commits the offense of aggravated nonsupport if the person has:

16 (i) ~~the offender has~~ left the state without making reasonable provisions for the support of a
17 spouse, child, or other dependent; or

18 (ii) ~~the offender has~~ been previously convicted of the offense of nonsupport.

19 (b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this
20 state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail
21 or collateral deposited to secure ~~the defendant's~~ a person's appearance in court in this state or another
22 state, which forfeiture has not been vacated.

23 (3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the
24 result of circumstances over which the person had no control. In determining ability to pay, after an
25 allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent
26 has priority over any other obligations of the person.

27 (4) When a person is ordered to pay support by a court or administrative agency with jurisdiction
28 to enter the order, the support order is prima facie evidence of the person's legal obligation to provide
29 support.

30 (5) Payment records maintained by the court or administrative agency that issued the support

1 order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

2 (6) It is not a defense to a charge of nonsupport that any other person, organization, or agency
3 furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of
4 the spouse, child, or other dependent.

5 (7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall
6 be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or
7 both.

8 (b) A person convicted of nonsupport who has failed to provide support under a court or
9 administrative order for 6 months or more or who has failed to provide support in a cumulative amount
10 equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the
11 state prison for a term not to exceed 2 years, or both.

12 (c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be
13 imprisoned in the state prison for a term not to exceed 10 years, or both.

14 (8) Before trial with the consent of the defendant, on entry of a plea of guilty or nolo contendere,
15 or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the
16 defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years
17 or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the
18 security in an amount sufficient to ensure payment of support by the defendant. After the security is
19 posted, the court shall release the defendant on the condition that the defendant comply with any order
20 for support. If there is no order for support, the court shall order the defendant to pay support to the
21 spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and,
22 if applicable, the child support guidelines adopted under 40-5-209.

23 (9) The bond, undertaking, or other security posted pursuant to subsection (8) ~~must be~~ is forfeited
24 if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the
25 original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce
26 a suspended sentence.

27 (10) As part of any prosecution under this section, the court shall also order the ~~defendant~~
28 offender to make restitution to the spouse, the child's caretaker, or any other dependent or to the person
29 or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the
30 sum of the arrearages payable under a support order or, if there is no support order, an amount

1 determined reasonable by the court. The terms for payment of restitution must be determined by the
2 court.

3 (11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of
4 nonsupport paid to or for the benefit of any person that the ~~defendant~~ offender has failed to support. A
5 bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency
6 entitled to receive support from the ~~defendant~~ offender.

7 (12) When ~~any~~ a payment of public assistance money has been made for the benefit of a child
8 by the department of public health and human services under the provisions of Title 53, a representative
9 of the department may sign a criminal complaint against the person obligated by law to support the child
10 who received the public assistance.

11 (13) The court may order that a term of imprisonment imposed under this section be served in
12 another facility made available by the county and approved by the sentencing court. The ~~defendant~~
13 offender, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions
14 on the ~~defendant's~~ offender's ability to leave the premises of the facility and require that the defendant
15 follow the rules of that facility. The facility may be a community-based prerelease center as provided for
16 in 53-1-203. The prerelease center may accept or reject ~~a defendant~~ an offender referred by the
17 sentencing court."
18

19 **Section 4.** Section 45-8-212, MCA, is amended to read:

20 **"45-8-212. Criminal defamation.** (1) Defamatory matter is anything that exposes a person or a
21 group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to
22 the person's or its business or occupation.

23 (2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other
24 means communicates any defamatory matter to a third person without the consent of the person defamed
25 commits the offense of criminal defamation and may be sentenced to imprisonment for not more than
26 6 months in the county jail or a fine of not more than \$500, or both.

27 (3) Violation of subsection (2) is justified if:

28 (a) the defamatory matter is true;

29 (b) the communication is absolutely privileged;

30 (c) the communication consists of fair comment made in good faith with respect to persons

1 participating in matters of public concern;

2 (d) the communication consists of a fair and true report or a fair summary of any judicial,
3 legislative, or other public or official proceedings; or

4 (e) the communication is between persons each having an interest or duty with respect to the
5 subject matter of the communication and is made with the purpose to further the interest or duty.

6 (4) A person may not be convicted on the basis of an oral communication of defamatory matter
7 except upon the testimony of at least two other persons that they heard and understood the oral
8 statement as defamatory or upon a plea of guilty or nolo contendere."

9
10 **Section 5.** Section 46-1-202, MCA, is amended to read:

11 **"46-1-202. Definitions.** As used in this title, unless the context requires otherwise, the following
12 definitions apply:

13 (1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea
14 answering a charge.

15 (2) "Arrest" means taking a person into custody in the manner authorized by law.

16 (3) "Arrest warrant" means a written order from a court directed to a peace officer or to some
17 other person specifically named commanding that officer or person to arrest another. The term includes
18 the original warrant of arrest and a copy certified by the issuing court.

19 (4) "Bail" means the security given for the primary purpose of ensuring the presence of the
20 defendant in a pending criminal proceeding.

21 (5) "Charge" means a written statement that accuses a person of the commission of an offense,
22 that is presented to a court, and that is contained in a complaint, information, or indictment.

23 (6) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or
24 upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent
25 jurisdiction authorized to try the case without a jury.

26 (7) "Court" means a place where justice is judicially administered and includes the judge of the
27 court.

28 (8) "Included offense" means an offense that:

29 (a) is established by proof of the same or less than all the facts required to establish the
30 commission of the offense charged;

1 (b) consists of an attempt to commit the offense charged or to commit an offense otherwise
2 included in the offense charged; or

3 (c) differs from the offense charged only in the respect that a less serious injury or risk to the
4 same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

5 (9) "Judge" means a person who is vested by law with the power to perform judicial functions.

6 (10) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and
7 if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

8 (11) "Make available for examination and reproduction" means to make material and information
9 that is subject to disclosure available upon request at a designated place during specified reasonable times
10 and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the
11 disclosing party is required to make copies at its expense, to deliver the materials or information to the
12 other party, or to supply the facilities or materials required to carry out tests on disclosed items. The
13 parties may by mutual consent make other or additional arrangements.

14 (12) "New trial" means a reexamination of the issue in the same court before another jury after
15 a verdict or finding has been rendered.

16 (13) "Notice to appear" means a written direction that is issued by a peace officer and that
17 requests a person to appear before a court at a stated time and place to answer a charge for the alleged
18 commission of an offense.

19 (14) "Offense" means a violation of any penal statute of this state or any ordinance of its political
20 subdivisions.

21 (15) "Parole" means the release to the community of a prisoner by a decision of the board of
22 pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the
23 board of pardons and parole and the supervision of the department of corrections.

24 (16) "Peace officer" means any person who by virtue of the person's office or public employment
25 is vested by law with a duty to maintain public order and make arrests for offenses while acting within
26 the scope of the person's authority.

27 (17) "Persistent felony offender" means an offender who has previously been convicted of a
28 felony and who is presently being sentenced for a second felony committed on a different occasion than
29 the first. An offender is considered to have been previously convicted of a felony if:

30 (a) the previous felony conviction was for an offense committed in this state or any other

1 jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

2 (b) less than 5 years have elapsed between the commission of the present offense and either:

3 (i) the previous felony conviction; or

4 (ii) the offender's release on parole or otherwise from prison or other commitment imposed as
5 a result of a previous felony conviction; and

6 (c) the offender has not been pardoned on the ground of innocence and the conviction has not
7 been set aside at the postconviction hearing.

8 (18) "Place of trial" means the geographical location and political subdivision in which the court
9 that will hear the cause is situated.

10 (19) "Preliminary examination" means a hearing before a judge for the purpose of determining if
11 there is probable cause to believe a felony has been committed by the defendant.

12 (20) "Probation" means release by the court without imprisonment of a defendant found guilty
13 of a crime. The release is subject to the supervision of the department of corrections upon direction of
14 the court.

15 (21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power
16 to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

17 (22) "Same transaction" means conduct consisting of a series of acts or omissions that are
18 motivated by:

19 (a) a purpose to accomplish a criminal objective and that are necessary or incidental to the
20 accomplishment of that objective; or

21 (b) a common purpose or plan that results in the repeated commission of the same offense or
22 effect upon the same person or the property of the same person.

23 (23) "Search warrant" means an order that is:

24 (a) in writing;

25 (b) in the name of the state;

26 (c) signed by a judge;

27 (d) a particular description of the place, object, or person to be searched and the evidence,
28 contraband, or person to be seized; and

29 (e) directed to a peace officer and commands the peace officer to search for evidence,
30 contraband, or persons.

(24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere, verdict, or upon a verdict or finding of guilty.

(25) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(26) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(27) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(28) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(29) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(30) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 6. Section 46-12-201, MCA, is amended to read:

"46-12-201. Manner of conducting arraignment -- use of two-way electronic audio-video communication -- exception. (1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name,

1 and if the defendant's true name is given as any other than that used in the charge, the court shall order
2 the defendant's name to be substituted for the name under which the defendant is charged.

3 (3) The court shall determine whether the defendant is under any disability that would prevent
4 the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until
5 the court determines the defendant is able to proceed.

6 (4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before
7 a court for an arraignment, this requirement may, in the discretion of the court, be satisfied either by the
8 defendant's physical appearance before the court or by two-way electronic audio-video communication.
9 The audio-video communication must operate so that the defendant and the judge can see each other
10 simultaneously and converse with each other, so that the defendant and ~~his~~ the defendant's counsel, if
11 any, can communicate privately, and so that the defendant and ~~his~~ the defendant's counsel are both
12 physically present in the same place during the two-way electronic audio-video communication. The
13 defendant may waive the requirement that ~~his~~ the defendant's counsel be in the defendant's physical
14 presence during the two-way electronic audio-video communication.

15 (5) A judge may order a defendant's physical appearance in court for arraignment. In a felony
16 case, a judge may not accept a plea of guilty or nolo contendere from a defendant who is not physically
17 present in the courtroom."
18

19 **Section 7.** Section 46-12-204, MCA, is amended to read:

20 "**46-12-204. Plea alternatives.** (1) A defendant may plead guilty, ~~or~~ not guilty, or nolo contendere.
21 If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea
22 of not guilty.

23 (2) The court may not accept a plea of guilty or nolo contendere without first determining that
24 the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement.
25 The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere
26 results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

27 (3) With the approval of the court and the consent of the prosecutor, a defendant may enter a
28 plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse
29 determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must
30 be allowed to withdraw the plea."

Section 8. Section 46-12-210, MCA, is amended to read:

"46-12-210. Advice to defendant. (1) Before accepting a plea of guilty or nolo contendere, the court shall determine that the defendant understands the following:

(a) (i) the nature of the charge for which the plea is offered;
(ii) the mandatory minimum penalty provided by law, if any;
(iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, one will be appointed to represent the defendant;

(c) that the defendant has the right:

(i) to plead not guilty or to persist in that plea if it has already been made;
(ii) to be tried by a jury and at the trial has the right to the assistance of counsel;
(iii) to confront and cross-examine witnesses against the defendant; and
(iv) not to be compelled to reveal personally incriminating information;

(d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

1 **Section 9.** Section 46-12-211, MCA, is amended to read:

2 **"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.**

3 (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage
4 in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or
5 nolo contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the
6 following:

7 (a) move for dismissal of other charges;

8 (b) agree that a specific sentence is the appropriate disposition of the case; or

9 (c) make a recommendation, or agree not to oppose the defendant's request, for a particular
10 sentence, with the understanding that the recommendation or request may not be binding upon the court.

11 (2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the
12 parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a
13 showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type
14 specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement or may defer its
15 decision as to the acceptance or rejection until there has been an opportunity to consider the presentence
16 report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant
17 that, if the court does not accept the recommendation or request, the defendant nevertheless has no right
18 to withdraw the plea.

19 (3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody
20 in the judgment and sentence the disposition provided for in the plea agreement.

21 (4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the
22 court shall, on the record, inform the parties of this fact and advise the defendant that the court is not
23 bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the
24 defendant that if the defendant persists in the guilty or nolo contendere plea, the disposition of the case
25 may be less favorable to the defendant than that contemplated by the plea agreement.

26 (5) For purposes of this section, in cases in which the defendant is charged with a misdemeanor
27 offense, a disclosure of the agreement through the use of two-way electronic audio-video communication,
28 allowing all of the participants to be observed and heard in the courtroom by all present, is considered to
29 be a disclosure in open court. Audio-video communication may be used if neither party objects and the
30 court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

1
2 **Section 10.** Section 46-12-212, MCA, is amended to read:

3 **"46-12-212. Determining accuracy of plea.** (1) The court may not accept a guilty plea without
4 determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in
5 incarceration.

6 (2) A defendant who is unwilling to admit to any element of the offense that would provide a
7 factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty or nolo
8 contendere to the offense if the defendant considers the plea to be in the defendant's best interest ~~and~~
9 ~~if a factual basis exists for the plea.~~"

10
11 **Section 11.** Section 46-13-108, MCA, is amended to read:

12 **"46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good
13 cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice
14 of that fact must be given at or before the omnibus hearing pursuant to 46-13-110.

15 (2) The notice must specify the alleged prior convictions and may not be made known to the jury
16 before the verdict is returned except as allowed by the Montana Rules of Evidence.

17 (3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a
18 hearing to determine if the allegations in the notice are true.

19 (4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior
20 convictions are true, the accused must be sentenced as provided by law.

21 (5) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo
22 contendere is given by the defendant."

23
24 **Section 12.** Section 46-13-109, MCA, is amended to read:

25 **"46-13-109. Notice by prosecutor of other crimes, wrongs, or acts.** (1) Except for good cause
26 shown, if the prosecutor intends to use evidence of other crimes, wrongs, or acts pursuant to Rule
27 404(b), Montana Rules of Evidence, notice must be given at or before the omnibus hearing held pursuant
28 to 46-13-110.

29 (2) The notice must specify the other crimes, wrongs, or acts and must include a statement as
30 to the purpose for which the evidence is to be offered.

(3) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo contendere is entered by the defendant."

Section 13. Section 46-14-311, MCA, is amended to read:

"46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206."

Section 14. Section 46-16-103, MCA, is amended to read:

"46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty or nolo contendere.

(2) Questions of law must be decided by the court and questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-110(3)."

Section 15. Section 46-16-105, MCA, is amended to read:

"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before or after judgment, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor

1 offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video
2 communication, allowing all of the participants to be observed and heard in the courtroom by all present,
3 is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video
4 communication may be used if neither party objects and the court agrees to its use. The audio-video
5 communication must operate as provided in 46-12-201."

6
7 **Section 16.** Section 46-17-203, MCA, is amended to read:

8 **"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication.** (1) Before
9 or during trial, a plea of guilty or nolo contendere may be accepted when:

10 (a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo
11 contendere in open court; and

12 (b) the court has informed the defendant of the consequences of the plea and of the maximum
13 penalty provided by law that may be imposed upon acceptance of the plea.

14 (2) A plea of guilty or nolo contendere in a justice's court, city court, or other court of limited
15 jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver
16 before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea
17 and waiver are entered voluntarily.

18 (3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor
19 offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video
20 communication, allowing all of the participants to be observed and heard in the courtroom by all present,
21 is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video
22 communication may be used if neither party objects and the court agrees to its use. The audio-video
23 communication must operate as provided in 46-12-201."

24
25 **Section 17.** Section 46-18-104, MCA, is amended to read:

26 **"46-18-104. Definitions.** As used in 46-18-101, 46-18-104, 46-18-105, 46-18-201, and
27 46-18-225, unless the context requires otherwise, the following definitions apply:

28 (1) "Community corrections" or "community corrections facility or program" means a community
29 corrections facility or program as defined in 53-30-303.

30 (2) "Crime of violence" means:

1 (a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during
2 the commission or attempted commission of a crime;

3 (b) a crime in which the offender causes a serious bodily injury or death to a person other than
4 himself the offender; or

5 (c) any sexual offense in which the offender causes bodily injury to the victim or uses threat,
6 intimidation, or force against the victim.

7 (3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo
8 contendere to a felony offense other than a crime of violence or who has been convicted of a felony
9 offense other than a crime of violence."
10

11 **Section 18.** Section 46-18-201, MCA, is amended to read:

12 **"46-18-201. Sentences that may be imposed.** (1) Whenever a person has been found guilty of
13 an offense upon a verdict of guilty or a plea of guilty or nolo contendere, the court may:

14 (a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under
15 the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided,
16 not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The
17 sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the
18 period of the deferred imposition. Reasonable restrictions or conditions may include:

19 (i) jail base release;

20 (ii) jail time not exceeding 180 days;

21 (iii) conditions for probation;

22 (iv) payment of the costs of confinement;

23 (v) payment of a fine as provided in 46-18-231;

24 (vi) payment of costs as provided in 46-18-232 and 46-18-233;

25 (vii) payment of costs of court-appointed counsel as provided in 46-8-113;

26 (viii) with the approval of the facility or program, an order that the offender be placed in a
27 community corrections facility or program as provided in 53-30-321;

28 (ix) with the approval of the prerelease center or prerelease program and confirmation by the
29 department of corrections that space is available, an order that the offender be placed in a prerelease
30 center or prerelease program for a period not to exceed 1 year;

- 1 (x) community service;
- 2 (xi) home arrest as provided in Title 46, chapter 18, part 10;
- 3 (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection
- 4 of society;
- 5 (xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
- 6 or
- 7 (xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).
- 8 (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a
- 9 period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose
- 10 on the defendant any reasonable restrictions or conditions during the period of suspended sentence.
- 11 Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).
- 12 (c) impose a fine as provided by law for the offense;
- 13 (d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed
- 14 counsel as provided in 46-8-113;
- 15 (e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or
- 16 commit the defendant to the department of corrections for a period not to exceed 5 years for placement
- 17 in an appropriate correctional facility or program;
- 18 (f) with the approval of the facility or program, order the offender to be placed in a community
- 19 corrections facility or program as provided in 53-30-321;
- 20 (g) with the approval of the prerelease center or prerelease program and confirmation by the
- 21 department of corrections that space is available, order the offender to be placed in a prerelease center
- 22 or prerelease program for a period not to exceed 1 year; or
- 23 (h) impose any combination of subsections (1)(b) through (1)(g).
- 24 (2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the
- 25 victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to
- 26 the victim as provided in 46-18-241 through 46-18-249.
- 27 (3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be
- 28 deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for
- 29 a felony, regardless of whether any other conditions are imposed.
- 30 (4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the

1 court shall consider any elapsed time and either expressly allow part or all of it as a credit against the
2 sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however,
3 must be allowed for jail or home arrest time already served.

4 (5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years
5 of a sentence of imprisonment imposed under the following sections may not be deferred or suspended:
6 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2),
7 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

8 (6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a
9 sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

10 (7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred
11 in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the
12 sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was
13 suspended.

14 (8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of
15 a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be
16 deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

17 (9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in
18 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part
19 5.

20 (10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to
21 imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual
22 offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided
23 in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent
24 or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and
25 for a period of time determined by the department of corrections. The period may not exceed the period
26 of state supervision of the person.

27 (11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to
28 imprisonment of the offender in the state prison, including placement of the offender in a community
29 corrections facility or program or a prerelease center or prerelease program. In considering alternatives
30 to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court

1 subsequently sentences the offender to a state prison, the court shall state the reasons why it did not
2 select an alternative to imprisonment, based on the criteria contained in 46-18-225.

3 (12) If a felony sentence includes probation, the department of corrections shall supervise the
4 defendant unless the court specifies otherwise.

5 (13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219
6 does not apply to a person sentenced under 46-18-219."
7

8 **Section 19.** Section 46-18-204, MCA, is amended to read:

9 **"46-18-204. Dismissal after deferred imposition.** Whenever the court has deferred the imposition
10 of sentence and after termination of the time period during which imposition of sentence has been
11 deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the
12 defendant to withdraw ~~his~~ a plea of guilty or nolo contendere or may strike the verdict of guilty from the
13 record and order that the charge or charges against ~~him~~ the defendant be dismissed. A copy of the order
14 of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form
15 prepared by the department of justice and containing identifying information about the defendant. After
16 the charge is dismissed, all records and data relating to the charge are confidential criminal justice
17 information, as defined in 44-5-103, and public access to the information may only be obtained by district
18 court order upon good cause shown."
19

20 **Section 20.** Section 46-18-231, MCA, is amended to read:

21 **"46-18-231. Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict of guilty or
22 a plea of guilty or nolo contendere, a person has been found guilty of an offense for which a felony
23 penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with
24 subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which
25 penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3),
26 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may
27 be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

28 (2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, a person has been
29 found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may
30 impose a fine only in accordance with subsection (3).

1 (3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able
2 to pay the fine. In determining the amount and method of payment, the court shall take into account the
3 nature of the crime committed, the financial resources of the defendant, and the nature of the burden that
4 payment of the fine will impose.

5 (4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not
6 to exceed \$50,000."

7
8 **Section 21. Section 46-24-203, MCA, is amended to read:**

9 **"46-24-203. Prompt notification to victims and witnesses of certain offenses. (1) A person**
10 **described in subsection (2) who provides the appropriate official with a current address and telephone**
11 **number must receive prompt advance notification, if possible, of proceedings relating to the person's**
12 **case, including:**

13 (a) the arrest of an accused;

14 (b) the release of the accused pending judicial proceedings;

15 (c) the crime with which the accused has been charged, including an explanation of the elements
16 of the offense when necessary to an understanding of the nature of the crime;

17 (d) proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo
18 contendere and the setting of a trial date;

19 (e) if the accused is convicted or pleads guilty or nolo contendere, the function of a presentence
20 report; the name, office address, and telephone number of the person preparing the report; and the
21 convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present
22 a statement in writing or orally at the sentencing proceeding and the convicted person's right to be
23 present at the sentencing proceeding and to have access to the victim's statement;

24 (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of
25 imprisonment, if imposed; and

26 (g) the right under 46-24-212 of a victim of a felony offense to receive information from the
27 department of corrections concerning the convicted person's incarceration.

28 (2) A person entitled to notification under subsection (1) must be a victim or witness of a felony
29 offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a
30 relative of ~~such~~ a victim or witness who is a minor, or a relative of a homicide victim."

1

2 **Section 22.** Section 53-30-303, MCA, is amended to read:

3 **"53-30-303. Definitions.** As used in this part, unless the context requires otherwise, the following
4 definitions apply:

5 (1) "Community corrections board" means a community corrections board as provided in
6 53-30-312.

7 (2) "Community corrections facility or program" means a community-based or community-oriented
8 facility or program, other than a jail, that:

9 (a) is established by a local or tribal government and operated by a unit of local government, a
10 tribal government, or a nongovernmental agency; and

11 (b) provides programs and services to aid offenders in:

12 (i) obtaining and holding regular employment;

13 (ii) enrolling in and maintaining academic courses;

14 (iii) participating in vocational training programs;

15 (iv) utilizing the resources of the community to meet their personal and family needs;

16 (v) obtaining the benefits of specialized treatment services that exist within the community; and

17 (vi) paying restitution or performing community restitution to crime victims.

18 (3) "Department" means the department of corrections created in 2-15-2301.

19 (4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation,
20 association, labor organization, or other nongovernmental entity.

21 (5) "Offender" means a person who has entered a plea of guilty or nolo contendere or has been
22 convicted of a criminal offense.

23 (6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

24 (7) "Unit of local government" means a county, city, town, or city-county consolidated
25 government."

26

27 **Section 23.** Section 61-11-203, MCA, is amended to read:

28 **"61-11-203. Definitions.** As used in this part, the following definitions apply:

29 (1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or
30 nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a

1 person charged with having committed any offense relating to the use or operation of a motor vehicle
2 ~~which~~ that is prohibited by law, ordinance, or administrative order.

3 (2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or
4 more conviction points according to the schedule specified in this subsection:

5 (a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

6 (b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle,
7 or negligent vehicular assault, 12 points;

8 (c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in
9 the commission of which a motor vehicle is used, 12 points;

10 (d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or
11 operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

12 (e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

13 (f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to
14 any person to stop at the scene of the accident and give the required information and assistance, as
15 defined in 61-7-105, 8 points;

16 (g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop
17 at the scene of the accident and give the required information or failure to otherwise report an accident
18 in violation of the law, 4 points;

19 (h) reckless driving, 5 points;

20 (i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

21 (j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302,
22 5 points;

23 (k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not
24 apply to operating a motor vehicle within a period of 180 days from the date the license expired);

25 (l) speeding, 3 points;

26 (m) all other moving violations, 2 points.

27 (3) There may not be multiple application of cumulative points when two or more charges are filed
28 involving a single occurrence. If there are two or more convictions involving a single occurrence, only the
29 number of points for the specific conviction carrying the highest points is chargeable against that
30 defendant.

1 (4) "License" means any type of license or permit to operate a motor vehicle."
2

3 Section 24. Section 87-1-112, MCA, is amended to read:

4 "87-1-112. Finding required. Before restitution may be ordered pursuant to 87-1-111, the finder
5 of fact at trial or the court upon entry of a guilty or nolo contendere plea ~~must~~ shall find that ~~such~~ the
6 illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not
7 required for state reimbursement under 87-1-111 when bond or bail is forfeited."

8 - END -

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (H) Judiciary -

04:00 PM

HB 176 SPONSOR: Bergsagel, Ernest SHORT TITLE: Revise the disposition of youth court records

BY REQUEST OF: Correctional Standards And Oversight Committee

REFERRED ON: 01/04/1999 HEARD ON: 01/13/1999

EXECUTIVE ACTION: 01/18/1999 Bill Passed -- VOTE: 18 - 0

FINAL DISPOSITION 03/19/1999 Chapter Number Assigned

HB 180 SPONSOR: Soft, Loren SHORT TITLE: Guardianship petition for youth in need of care

BY REQUEST OF: Department Of Public Health And Human Services

REFERRED ON: 01/04/1999 HEARD ON: 01/12/1999

EXECUTIVE ACTION: 01/15/1999 Bill Passed as Amended -- VOTE: 15 - 5

FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 203 SPONSOR: Shockley, Jim SHORT TITLE: Revise criminal laws

REFERRED ON: 01/05/1999 HEARD ON: 01/15/1999

EXECUTIVE ACTION: 01/22/1999 Bill Passed as Amended -- VOTE: 15 - 3

FINAL DISPOSITION 04/23/1999 Chapter Number Assigned

HB 209 SPONSOR: Shockley, Jim SHORT TITLE: Provide plea of nolo contendere in criminal matters

REFERRED ON: 01/05/1999 HEARD ON: 01/15/1999

EXECUTIVE ACTION: 01/25/1999 Bill Passed as Amended -- VOTE: 16 - 4

FINAL DISPOSITION 04/22/1999 Chapter Number Assigned

HB 213 SPONSOR: McGee, Dan SHORT TITLE: Earned incentive time on parole supervision

REFERRED ON: 01/06/1999 HEARD ON: 01/18/1999

TABLED ON: 01/19/1999

FINAL DISPOSITION 03/01/1999 (H) Missed Deadline for General Bill Transmittal

HB 214 SPONSOR: McGee, Dan SHORT TITLE: Clarify statute of limitations on surveying of real property

REFERRED ON: 01/06/1999 HEARD ON: 01/19/1999

EXECUTIVE ACTION: 01/22/1999 Bill Passed -- VOTE: 18 - 0

FINAL DISPOSITION 03/16/1999 Chapter Number Assigned

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN ROBERT C. CLARK, on January 15, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing Date: 1/15/99 HB 24, HB 135, HB 203, HB 209,
Date Posted: 1/7/99

Questions from Committee Members and Responses:

{Tape : 2; Side : A; Approx. Time Counter : 440 - 550}

{Tape : 2; Side : B; Approx. Time Counter : 0 - 268}

Closing by Sponsor:

Rep. Stovall made closing statements

{Tape : 2; Side : B; Approx. Time Counter : 268 - 288}

EXECUTIVE ACTION ON HB 135

Motion/Vote: Rep. Kitzenberg moved that HB 135 be PASSED.

Motion carried 19-1 with Jore voting no.

{Tape : 2; Side : B; Approx. Time Counter : 288 - 313}

HEARING ON HB 203

Sponsor:

Rep. Shockley presented HB 203.

{Tape : 2; Side : B; Approx. Time Counter : 313 - 458}

Proponents:

None

Opponents:

None

Informational Testimony:

Elizabeth Horsman, Montana County Attorney's Association

{Tape : 2; Side : B; Approx. Time Counter : 458}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 21}

Questions from Committee Members and Responses:

{Tape : 3; Side : A; Approx. Time Counter : 21 - 272}

Closing by Sponsor:

Rep. Shockley made closing statements.

{Tape : 3; Side : A; Approx. Time Counter : 272 - 296}

HEARING ON HB 209

Sponsor:

Rep. Shockley presented HB 209.

{Tape : 3; Side : A; Approx. Time Counter : 296 - 386}

Proponents:

Al Smith, Montana Trial Lawyers Association

{Tape : 3; Side : A; Approx. Time Counter : 386 - 420}

Opponents:

Elizabeth Horsman, Montana County Attorneys Association

{Tape : 3; Side : A; Approx. Time Counter : 420 - 550}

{Tape : 3; Side : B; Approx. Time Counter : 0 - 43}

Chairman Clark deemed Ms. Horsman's testimony as an Opponent not informational as she originally testified.

Informational Testimony:

Kim Christopher, Lake County Attorney

{Tape : 3; Side : B; Approx. Time Counter : 43 - 76}

Questions from Committee Members and Responses:

{Tape : 3; Side : B; Approx. Time Counter : 76 - 302}

Closing by Sponsor:

Rep. Shockley made closing statements.

{Tape : 3; Side : B; Approx. Time Counter : 302 - 329}

EXECUTIVE ACTION ON HB 116

Motion/Vote: Rep. McGee moved that HB 116 be PASSED as amended.
Motion carried 18-2 with Jore and Molnar voting no.

Motion/Vote: Rep. Soft moved that HB 180 be PASSED as amended.
Motion carried 15-5 with Clark, Curtiss, Jore, McGee, and Molnar voting no.

{Tape : 3; Side : B; Approx. Time Counter : 329 - 550}

{Tape : 4; Side : A; Approx. Time Counter : 0 - 550}

{Tape : 4; Side : B; Approx. Time Counter : 0 - 550}

{Tape : 5; Side : A; Approx. Time Counter : 0 - 53}

HB 77 was discussed and postponed to a later date.

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN ROBERT C. CLARK**, on January 25, 1999
at 8:00 A.M., in Room 312 - 1 Capitol.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Dan McGee, Vice Chairman (R)
Rep. Diana Wyatt, Vice Chairman (D)
Rep. Chris Ahner (R)
Rep. Shiell Anderson (R)
Rep. Paul Clark (D)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Rick Jore (R)
Rep. Sam Kitzenberg (R)
Rep. Brad Molnar (R)
Rep. Mark Noennig (R)
Rep. Jim Shockley (R)
Rep. Loren Soft (R)
Rep. Carol Williams (D)
Rep. Cindy Younkin (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Opponents:

None

Informational Testimony:

None

Questions from Committee Members and Responses:

None

Closing by Sponsor:

Rep. Cobb waived closing.

EXECUTIVE ACTION ON HB 24

Motion/Vote: REP. SOFT moved that HB 24 BE PASSED. Motion carried 17-3 with Jore, McGee, and Molnar voting no.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 84}

EXECUTIVE ACTION ON HB 209

Motion: REP. SHOCKLEY moved that HB 209 BE PASSED.

EXHIBIT(4)

Motion/Vote: REP. SHOCKLEY moved that HB 209 BE AMENDED. Motion carried 19-1 with Jore voting no.

Motion/Vote: REP. SHOCKLEY moved that HB 209 BE PASSED AS AMENDED. Motion carried 16-4 with Anderson, Curtiss, Jore, and Soft voting no.

{Tape : 2; Side : B; Approx. Time Counter : 84 - 550}

{Tape : 3; Side : A; Approx. Time Counter : 0 - 95}

EXECUTIVE ACTION ON HB 233

Motion/Vote: REP. YOUNKIN moved that HB 233 DO PASS. Motion carried 18-2 with Clark and Jore voting no.

{Tape : 3; Side : A; Approx. Time Counter : 95 - 256}

EXECUTIVE ACTION ON HB 251

Motion: REP. JORE moved that HB 251 BE PASSED.

INDEX TO BILLS IN COMMITTEE

June 30, 1999

- Committee: (S) Judiciary -

04:57 PM

-
- HB 204** **SPONSOR:** Shockley, Jim **SHORT TITLE:** Authorize certain financial options; revise certain procedures in justice courts
 REFERRED ON: 02/06/1999 **HEARD ON:** 03/11/1999
 EXECUTIVE ACTION: 03/17/1999 Bill Concurred as Amended -- VOTE: 9 - 0
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- HB 209** **SPONSOR:** Shockley, Jim **SHORT TITLE:** Provide plea of nolo contendere in criminal matters
 REFERRED ON: 01/30/1999 **HEARD ON:** 03/11/1999
 EXECUTIVE ACTION: 03/17/1999 Bill Concurred as Amended -- VOTE: 8 - 1
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-
- HB 214** **SPONSOR:** McGee, Dan **SHORT TITLE:** Clarify statute of limitations on surveying of real property
 REFERRED ON: 01/28/1999 **HEARD ON:** 03/03/1999
 EXECUTIVE ACTION: 03/03/1999 Bill Concurred -- VOTE: 8 - 0
 FINAL DISPOSITION 03/16/1999 Chapter Number Assigned
-
- HB 227** **SPONSOR:** Molnar, Brad **SHORT TITLE:** Generally revise collection laws involving corporations
 REFERRED ON: 02/23/1999 **HEARD ON:** 03/12/1999
 EXECUTIVE ACTION: 03/12/1999 Bill Concurred -- VOTE: 8 - 0
 FINAL DISPOSITION 03/31/1999 Chapter Number Assigned
-
- HB 233** **SPONSOR:** Schmidt, Trudi **SHORT TITLE:** Allow municipal & city courts to assign the collection of fines.
 REFERRED ON: 01/30/1999 **HEARD ON:** 03/02/1999
 EXECUTIVE ACTION: 03/03/1999 Bill Concurred -- VOTE: 8 - 1
 FINAL DISPOSITION 03/16/1999 Chapter Number Assigned
-
- HB 244** **SPONSOR:** Facey, Tom **SHORT TITLE:** Revise pay for retired judges called to service
 REFERRED ON: 02/22/1999 **HEARD ON:** 03/23/1999
 EXECUTIVE ACTION: 03/24/1999 Bill Concurred -- VOTE: 8 - 0
 FINAL DISPOSITION 04/06/1999 Chapter Number Assigned
-
- HB 255** **SPONSOR:** Anderson, Shiell **SHORT TITLE:** Increase felony threshold for property crimes
 REFERRED ON: 01/27/1999 **HEARD ON:** 03/19/1999
 EXECUTIVE ACTION: 03/26/1999 Bill Concurred as Amended -- VOTE: 8 - 0
 FINAL DISPOSITION 04/22/1999 Chapter Number Assigned
-

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 11, 1999
at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 203, HB 204, HB 209, HB
492, 3/8/1999
Executive Action: HB 371, HB 492

HEARING ON HB 492

Sponsor: REP. HAL HARPER, HD 52, Helena

Proponents: Herb Goodwin, First Special Services Forces
Association
Joe Upshaw, Civilian Aide to the Secretary of the
Army, Veteran of Montana's 163rd Infantry
Regiment

if it was mandatory. In the larger counties, the courts will benefit and the banks will lose.

{Tape : 2; Side : A; Approx. Time Counter : 10.20}

HEARING ON HB 209

Sponsor: REP. JIM SHOCKLEY, HD 61, Victor

Proponents: None

Opponents: Mike McGrath, Lewis and Clark County Attorney
Dennis Paxinos, Yellowstone County Attorney
Marty Lambert, Gallatin County Attorney

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, Victor, introduced HB 209 which provides for a nolo contendere plea in a criminal prosecution. This is being done to save money and move the court dockets. Currently the statutes provide for a plea of guilty and not guilty. In the plea of not guilty, there is an Alfred plea. This involves the defendant stating that he or she is not really guilty but since the prosecution can prove it, they will plead guilty anyway. A nolo contendere plea is addressed in Montana Rules of Evidence - 410, EXHIBIT(4). On page 31, line 19, it is found under the definition of "conviction". It cannot be used against a person in a civil or a criminal matter.

If there is a traffic accident which involves a DUI, there are two suits. There is a misdemeanor of the DUI, running a stop sign, failure to yield, etc., and a civil action which may have a high value. Insurance companies do not want the defendant to plead guilty to a traffic violation because that can be used to prove their case in the civil suit. If the defendant pleads "nolo", he can get out of the criminal system and let the personal injury attorneys and the insurance companies fight over the civil suit. This saves the taxpayers money and doesn't hurt the taxpayers in any way. This cannot be done without the permission of the judge. The amendment that the county attorneys want to add would be on page 20 and would add that they would have the opportunity of approving the plea. Also on page 22, line 29, they want to reinstate the stricken language that states that a factual basis for the plea must be put in the record. He has no problem with either amendment.

Proponents' Testimony: None

Opponents' Testimony:

Mike McGrath, Lewis and Clark County Attorney, remarked that he is not necessarily an opponent. This bill codifies an existing practice under North Carolina v. Alfred. County attorneys are concerned with language in the bill on pages 20 and 22. On page 20, Section 8 provides that a defendant may, with the consent of the court, plead nolo contendere. They ask that this be amended to add the consent of the prosecutor. On page 22, line 27, they would also ask that the consent of the prosecutor be added. Also, the stricken language on lines 27 and 28, should be reinserted. He added that **REP. SHOCKLEY** has no problem with these amendments.

Typically under these pleas, a defendant will admit that the prosecution has sufficient evidence to convict and that he or she does not wish to go to trial. In effect, they enter a guilty plea saying that they do not wish to go to trial and do not wish to contest the charges but will not admit to the facts as alleged in the information. The prosecutor recites, on the record, the factual basis that would be proven if the case went to trial. The court then accepts the plea and sentences the defendant. If the defendant later wants to withdraw their plea, the factual recitation is important.

The reason for the consent of the prosecutor to be added is that in some cases it is not appropriate to have a nolo contendere plea. The most important of these cases would be sexual offenses involving minors. The goal in sentencing is to require the defendant to go through a effective treatment program. The defendant needs to admit the offense before a treatment requirement can be imposed.

{Tape : 2; Side : A; Approx. Time Counter : 10.30}

Dennis Paxinos, Yellowstone County Attorney, remarked that it is his understanding that this bill is mostly for insurance purposes in civil cases. He urged that a nolo contendere be eliminated for a sexual offense. The Montana Supreme Court has pronounced three decisions that have dramatically changed how prosecutors need to look at sex offenses, especially against minors. Without an acknowledgment of a guilty plea, the Court has held that you cannot force a defendant into a treatment plan. On another decision, they have held that what is said in a treatment plan cannot be used to revoke the defendant.

Marty Lambert, Gallatin County Attorney, spoke in favor of the amendments. Nolo contendere would be badly abused in sex crime cases. The judge needs to make a factual finding as to guilt. The last question is always having the defendant tell the Court

what he or she did to make them plead guilty. He has seen numerous negotiated pleas fail at that point because they do not want to admit to sexual offense. If the defendant will not admit that he or she is a sexual offender, it is difficult to have them accepted into treatment. Also, it is also very cathartic for a victim to hear the defendant admit to the crime.

It is important to have a record of the voluntary plea. The defendant needs to admit and the court make a finding that the prosecutor has facts sufficient to convict that person. This will avoid future litigation.

{Tape : 2; Side : A; Approx. Time Counter : 10.37}

Questions from Committee Members and Responses:

SEN. GRIMES expounded that he is very concerned about allowing sexual offenders another back door. However, he questioned whether there may be a Constitutional problem with allowing a nolo contendere plea in one criminal section of law and not another criminal section of law. **Mr. Lambert** was not aware of any problem of Constitutional import but believed there would be great practical problems with regard to their treatment and the protection of society once they leave the courtroom. Someone needs to have a handle on this person's behavior. Currently, under North Carolina v. Alfred, we allow defendants to plead guilty even though they will not admit to the crime.

SEN. GRIMES commented that if we know that sex offenders would misuse this plea, it would seem that it could be abused for other types of criminal activity. **Mr. Lambert** believed that by amending the bill so that the prosecutor would have to agree with the plea, the prosecutor could make sure that it is not abused to take the easy way out.

SEN. DOHERTY claimed that in the event of a car accident and a potential claim of negligent vehicular homicide or another similar charge, there would also be a civil case. The individual, the defense lawyer, and the criminal court system have an obvious interest in completing the case. The individual may be willing to plead guilty, pay the fine, and walk away. The insurance company lawyer contacts the defense lawyer and tells him that if the individual pleads guilty, that will be used in the civil case. An incredible amount of pressure is placed on the defense lawyer and the person who caused the accident. They are reminded about the clause in every insurance policy that states if anything is done to affect the outcome of the case, the insurance company will not pay. By allowing a nolo plea, the burden is shifted to the civil court system which may have been able to avoid a lawsuit due to the guilty plea.

REP. SHOCKLEY disagreed. The purpose of the bill is to help the taxpayers and the court systems. In the situation where there is both a civil and a criminal case, without this bill the persons involved in the civil suit can sit back and let the county attorney prove their case for them in state court. The result is that most of their work is done and all they need to do is prove damages. This bill allows the taxpayers, who are funding the county attorney, to get out of the lawsuit and let the insurance companies fight this out in district court.

SEN. BARTLETT questioned the potential problems involved in not allowing a defendant in a sex crime case to plead nolo contendere. In all other criminal charges, the defendant would have a nolo plea. Mr. Lambert responded that this depend upon whether this involved procedural aspects or whether it would involve substantive aspects, which would implicate a Constitutional provision for the courts to determine. Mr. Paxinos remarked that the legislative body had the right to decide the pleas which could be entered on crimes. Regarding the sex crimes, his concern is that without a guilty plea a person could not be forced into treatment to testify against himself. A suspended sentence could not be revoked if the defendant admitted to new crimes.

Closing by Sponsor:

REP. SHOCKLEY maintained that the purpose of the bill is to help the taxpayers. The federal courts have been using this process for decades. They are not warm and fuzzy with defendants. The judge and the county attorney need to approve a nolo plea. In the instance of a plea of not guilty where the defendant is convicted, he still maintains that he is not guilty. It costs thousands of dollars to convict him but he is no more amenable to sex offender treatment than he was before. A convicted person who pled not guilty is no more amenable to treatment than when he takes a nolo plea. From a constitutional aspect, there should be no problem because the federal court system has been using this practice for a long time. Montana Rules of Evidence, Rule 410, specifically provides for nolo contendere.

{Tape : 2; Side : B; Approx. Time Counter : 11.00}

OVERVIEW OF CLASSIFICATIONS LEVELS OF 1, 2, AND 3
FOR SEX OFFENDERS

Sandy Heaton, Clinician Director of the Sex Offender Program at Montana State Prison, remarked that she has worked with sex offenders for over 20 years. She is also President of the Montana Sex Offender Treatment Association.

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN LORENTS GROSFIELD, on March 17, 1999
at 9:12 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted:

Executive Action: HB 76, HB 106, HB 180, HB 204,
HB 209, HB 366, HB 593

EXECUTIVE ACTION ON HB 106

SEN. HALLIGAN commented that the effective date of the Act was October. He questioned whether this should take effect at an earlier date. Steve Bullock, Department of Justice, responded that this was not an issue.

Motion: SEN. HALLIGAN moved that HB 106 BE CONCURRED IN.

Motion/Vote: SEN. HALLIGAN moved that HB 180 BE AMENDED BY REINSERTING (B) LANGUAGE. Motion carried unanimously -8-0.

Ms. Lane further explained that both bills amend 41-3-1103. In HB 180 this is found on page 9. In HB 366, this is found on page 28, lines 24-25.

Motion/Vote: SEN. HALLIGAN moved that HB 180 BE CONCURRED IN AS AMENDED. Motion carried unanimously - 9-0.

EXECUTIVE ACTION ON HB 204

Ms. Lane explained that the amendments, HB020401.av1, EXHIBIT(3), were requested by the judges in Bozeman who are currently receiving grant money from the federal government to help establish drug courts. This would amend the jurisdictional sections dealing with justice of the peace courts so that it is clear that they can establish a drug court and receive the federal funding.

REP. SHOCKLEY added that this is optional with the districts on whether or not they want to have a drug court. This needs to be with the concurrence of the lower court justices or city court judges.

Motion/Vote: SEN. MCNUTT moved that HB 204 BE AMENDED. Motion carried unanimously 9-0.

Motion: SEN. MCNUTT moved that HB 204 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. HOLDEN questioned the rationale behind not returning the interest to the convicted person in the event that this person was innocent. REP. SHOCKLEY maintained that this would be an administrative nightmare. The amount of money involved would require more labor than the money was worth. Currently the only people who benefit would be the bank. This bill allows that instead of the banks using the money for no reason, the courts are able to use the interest which the money earns.

Vote: Motion carried unanimously - 9-0.

EXECUTIVE ACTION ON HB 209

Ms. Lane explained that amendments HB020902.ajm, EXHIBIT(4), address the concerns of the county attorneys. There is a

conceptual amendment from **SEN. GRIMES** to not allow the use of nolo contendere in sexual crimes.

Motion: **SEN. HALLIGAN** moved that HB 209 BE AMENDED.

Discussion:

REP. SHOCKLEY remarked that the amendments would give the county attorney a veto in all circumstances. The purpose of this legislation is to make it easier to move things through the criminal justice system.

Vote: The motion carried unanimously - 9-0.

Ms. Lane explained that the conceptual amendment would amend Section 8 of the bill, 46-12-204. A new subsection (4) would be added to that section which would state that the court may not accept a plea of nolo contendere in sexual offense cases. Sexual offense cases would be defined as in 46-23-502(6). This would include any violation of or attempt, solicitation, or conspiracy to commit a violation of 45-5-502, 503, 504(2)(c) and 507, or 45-5-625.

SEN. GRIMES remarked that it is important to get this people in sexual treatment. They need to be convicted of the crime before this can occur.

SEN. HOLDEN added that this is a public policy issue and he would like to have additional testimony on the issue before this was changed.

SEN. GRIMES insisted that his option would then be to strike Section 8 in its entirety or table the bill.

SEN. BARTLETT commented that there was testimony at the hearing by the county attorneys that no prosecutor should ever be allowed to accept a nolo contendere plea in sex offenses because the treatment requirements for sex offenders specify that they have to acknowledge that they have committed this kind of an act. If they get by in their plea by not admitting guilt, they will never meet the treatment requirements for sex offenders.

Motion: **SEN. GRIMES** moved that HB 209 BE AMENDED BY ADDING THE NEW SUBSECTION (4) TO THE BILL.

REP. SHOCKLEY did not object to the amendment. A person can still plead not guilty, be convicted, and has not acknowledged guilt. He strongly supports that county attorneys have veto power over any plea.

Ms. Lane further explained that the definition of sexual offense should be referenced which is in the Registration of Sexual and Violent Offenders Law, 46-3-3502(6). She suggested that on page 20 of the bill, a new subsection (4) be inserted which stated that the court may not accept a plea of nolo contendere in a case charging or involving sexual offense as defined in 46-23-502(6). This would include sexual assault, sexual intercourse without consent, third offense indecent exposure, incest, and sexual abuse of children. She added that 45-5-505, deviant sexual conduct, is not within the definition.

Vote: The motion carried unanimously - 9-0.

Motion/Vote: SEN. HALLIGAN moved that HB 209 BE CONCURRED IN AS AMENDED. The motion carried unanimously - 8-1 with SEN. DOHERTY voting no.

{Tape : 2; Side : A; Approx. Time Counter : 11.02}

EXECUTIVE ACTION ON HB 366

Motion/Vote: SEN. GRIMES moved that HB 180 BE AMENDED BY INSERTING THE LANGUAGE APPEARING ON PAGE 9, LINES 25-27 OF HB 180 INTO HB 366 ON PAGE 28, LINES 24-25. The motion carried unanimously - 8-0.

Mr. Hunter explained that the first two amendments removed the immediate effective date. This bill will cause a change in social work practice. It will also cause a change for the county attorneys and the courts. Everyone needs to be aware of the new practices which will occur as a result of this bill.

Amendment no. 4 addresses the interviews which take place when a social worker is going out to interview a child regarding a report of abuse and neglect. This language allows that the social worker continue to do interviews and they be videotaped or audio taped as appropriate. The social worker could ask the child if they wanted to have someone else present at the time of the interview.

Amendment no. 8 involves a change in terminology. House Bill 243 set up a new structure of emergency placement hearings. This was not adopted but the language about emergency placement hearings was brought over in place of the show cause hearing.

There was discussion regarding shortening the time frame for the hearing to take place. This would strike the ten day time frame and replace the 20 day time frame that was the case in the past. The Department favored the 10 day time frame.



AN ACT SPECIFICALLY PROVIDING FOR A PLEA OF NOLO CONTENDERE IN A CRIMINAL PROSECUTION; AND AMENDING SECTIONS 41-3-609, 45-2-101, 45-5-222, 45-5-621, 45-8-212, 46-1-202, 46-12-201, 46-12-204, 46-12-210, 46-12-211, 46-12-212, 46-13-108, 46-13-109, 46-14-311, 46-16-103, 46-16-105, 46-17-203, 46-18-104, 46-18-201, 46-18-204, 46-18-231, 46-24-203, 53-30-303, 61-11-203, AND 87-1-112, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-609, MCA, is amended to read:

"41-3-609. Criteria for termination. (1) The court may order a termination of the parent-child legal relationship upon a finding that any of the following circumstances exist:

- (a) the parents have relinquished the child pursuant to 42-2-402 and 42-2-412;
- (b) the child has been abandoned by the parents as set forth in 41-3-102;
- (c) the identity of the parent is unknown and has been unknown for a period of 90 days and reasonable efforts to identify and locate the parent have failed;
- (d) the parent is convicted of a felony in which sexual intercourse occurred or is a minor adjudicated a delinquent youth because of an act that, if committed by an adult, would be a felony in which sexual intercourse occurred and, as a result of the sexual intercourse, the child is born; or
- (e) the child is an adjudicated youth in need of care and both of the following exist:
 - (i) an appropriate treatment plan that has been approved by the court has not been complied with by the parents or has not been successful; and
 - (ii) the conduct or condition of the parents rendering them unfit is unlikely to change within a reasonable time; or
- (f) the parent has substantially failed to successfully complete or meet the goals of a treatment plan approved by the court and the child has been in an out-of-home placement for a cumulative total period of 1 year or longer.

(2) In determining whether the conduct or condition of the parents is unlikely to change within a reasonable time, the court shall enter a finding that continuation of the parent-child legal relationship will likely result in continued abuse or neglect or that the conduct or the condition of the parents renders the parents unfit, unable, or unwilling to give the child adequate parental care. In making the determinations, the court shall consider but is not limited to the following:

(a) emotional illness, mental illness, or mental deficiency of the parent of a duration or nature as to render the parent unlikely to care for the ongoing physical, mental, and emotional needs of the child within a reasonable time;

(b) a history of violent behavior by the parent;

(c) a single incident of life-threatening or gravely disabling injury to or disfigurement of a child caused by the parent;

(d) excessive use of intoxicating liquor or of a narcotic or dangerous drug that affects the parent's ability to care and provide for the child;

(e) present judicially ordered long-term confinement of the parent;

(f) the injury or death of a child because of proven abuse or neglect; and

(g) any reasonable efforts by protective service agencies that have been unable to rehabilitate the parent.

(3) In considering any of the factors in subsection (2) in terminating the parent-child relationship, the court shall give primary consideration to the physical, mental, and emotional conditions and needs of the child. The court shall review and, if necessary, order an evaluation of the child's or the parent's physical, mental, and emotional conditions.

(4) A treatment plan is not required under this part upon a finding by the court following hearing if:

(a) two medical doctors or clinical psychologists submit testimony that the parent cannot assume the role of parent;

(b) the parent is incarcerated for more than 1 year and a treatment plan is not practical considering the incarceration; or

(c) the death or serious bodily injury, as defined in 45-2-101~~(64)~~, of a child caused by abuse or neglect by the parent has occurred."

Section 2. Section 45-2-101, MCA, is amended to read:

"45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and when relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare the beneficiary is interested. Benefit does not include an advantage promised generally to a group or class of voters as a consequence of public measures that a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan that results in the repeated commission of the same offense or that affects the same person or the same persons or the property of the same person or persons.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to that device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or

statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression that is false and that the offender does not believe to be true;

(b) fail to correct a false impression that the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether the impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance that the offender does not intend to perform or knows will not be performed. Failure to perform, standing alone, is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to the person's or its business or occupation.

(19) "Deprive" means:

(a) to withhold property of another:

(i) permanently;

(ii) for such a period as to appropriate a portion of its value; or

(iii) with the purpose to restore it only upon payment of reward or other compensation; or

(b) to dispose of the property of another and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Document" means, with respect to offenses involving the medicaid program, any application, claim, form, report, record, writing, or correspondence, whether in written, electronic, magnetic, microfilm, or other form.

(22) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(23) "Forcible felony" means any felony that involves the use or threat of physical force or violence against any individual.

(24) A "frisk" is a search by an external patting of a person's clothing.

(25) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(26) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare the affected person is interested.

(27) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(28) "Human being" means a person who has been born and is alive.

(29) An "illegal article" is an article or thing that is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(30) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(31) "Intoxicating substance" means any controlled substance, as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. Intoxicating substance does not include dealcoholized wine or any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(32) An "involuntary act" means any act that is:

- (a) a reflex or convulsion;
- (b) a bodily movement during unconsciousness or sleep;
- (c) conduct during hypnosis or resulting from hypnotic suggestion; or
- (d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(33) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(34) "Knowingly"--a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when the person is aware of the person's own conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when the person is aware that it is highly probable that the result will be caused by the person's conduct. When knowledge of the existence of a particular fact is an element of an offense, knowledge is established if a person is aware of a high probability of its existence. Equivalent terms, such as "knowing" or "with knowledge", have the same meaning.

(35) "Medicaid" means the Montana medical assistance program provided for in Title 53, chapter 6.

(36) "Medicaid agency" has the meaning in 53-6-155.

(37) "Medicaid benefit" means the provision of anything of pecuniary value to or on behalf of a recipient under the medicaid program.

(38) (a) "Medicaid claim" means a communication, whether in oral, written, electronic, magnetic, or other form:

(i) that is used to claim specific services or items as payable or reimbursable under the medicaid program; or

(ii) that states income, expense, or other information that is or may be used to determine entitlement to or the rate of payment under the medicaid program.

(b) The term includes any related documents submitted as a part of or in support of the claim.

(39) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person incapable of appreciating the nature of the person's own conduct.

(40) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling the person's own conduct as a result of the influence of an intoxicating substance.

(41) "Misdemeanor" means an offense for which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or for which the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(42) "Negligently"--a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when the person consciously disregards a risk that the result will occur or that the circumstance exists or when the person disregards a risk of which the person should be aware that the result will occur or that the circumstance exists. The risk must be of a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms, such as "negligent" and "with negligence", have the same meaning.

(43) "Nolo contendere" means a plea in which the defendant does not contest the charge or charges against the defendant and neither admits nor denies the charge or charges.

~~(43)~~(44) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance of the labor or service.

~~(44)~~(45) "Obtains or exerts control" includes but is not limited to the taking, the carrying away, or the sale, conveyance, or transfer of title to, interest in, or possession of property.

~~(45)~~(46) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

~~(46)~~(47) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

~~(47)~~(48) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

~~(48)~~(49) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

~~(49)~~(50) "Official proceeding" means a proceeding heard or that may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with the proceeding.

~~(50)~~(51) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

~~(51)~~(52) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though the interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

~~(52)~~(53) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which the person directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

~~(53)~~(54) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while

acting within the scope of the person's authority.

~~(54)~~(55) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

~~(55)~~(56) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision of government.

~~(56)~~(57) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

~~(57)~~(58) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

~~(58)~~(59) "Premises" includes any type of structure or building and any real property.

~~(59)~~(60) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

- (a) real estate;
- (b) money;
- (c) commercial instruments;
- (d) admission or transportation tickets;
- (e) written instruments that represent or embody rights concerning anything of value, including labor or services, or that are otherwise of value to the owner;
- (f) things growing on, affixed to, or found on land and things that are part of or affixed to any building;
- (g) electricity, gas, and water;
- (h) birds, animals, and fish that ordinarily are kept in a state of confinement;
- (i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;
- (j) any other articles, materials, devices, substances, and any whole or partial copies, descriptions, photographs, prototypes, or models thereof that constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret

designed process, procedure, formula, invention, or improvement; and

(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

~~(60)~~(61) "Property of another" means real or personal property in which a person other than the offender has an interest that the offender has no authority to defeat or impair, even though the offender may have an interest in the property.

~~(61)~~(62) "Public place" means any place to which the public or any substantial group has access.

~~(62)~~(63) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

~~(63)~~(64) "Purposely"--a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is the person's conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although the purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms, such as "purpose" and "with the purpose", have the same meaning.

~~(64)~~(65) (a) "Serious bodily injury" means bodily injury that:

- (i) creates a substantial risk of death;
- (ii) causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ; or
- (iii) at the time of injury, can reasonably be expected to result in serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ.

(b) The term includes serious mental illness or impairment.

~~(65)~~(66) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

~~(66)~~(67) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by

the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

~~(67)~~(68) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

~~(68)~~(69) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above the land and water.

~~(69)~~(70) "Statute" means any act of the legislature of this state.

~~(70)~~(71) "Stolen property" means property over which control has been obtained by theft.

~~(71)~~(72) A "stop" is the temporary detention of a person that results when a peace officer orders the person to remain in the peace officer's presence.

~~(72)~~(73) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

~~(73)~~(74) "Threat" means a menace, however communicated, to:

- (a) inflict physical harm on the person threatened or any other person or on property;
- (b) subject any person to physical confinement or restraint;
- (c) commit any criminal offense;
- (d) accuse any person of a criminal offense;
- (e) expose any person to hatred, contempt, or ridicule;
- (f) harm the credit or business repute of any person;
- (g) reveal any information sought to be concealed by the person threatened;
- (h) take action as an official against anyone or anything, withhold official action, or cause the action or withholding;
- (i) bring about or continue a strike, boycott, or other similar collective action if the person making the threat demands or receives property that is not for the benefit of groups that the person purports to represent; or
- (j) testify or provide information or withhold testimony or information with respect to another's

legal claim or defense.

~~(74)~~(75) (a) "Value" means the market value of the property at the time and place of the crime or, if the market value cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value must be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, is considered the amount due or collectible. The figure is ordinarily the face amount of the indebtedness less any portion of the indebtedness that has been satisfied.

(ii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation is considered the amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network is considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than \$500 by the standards set forth in subsection ~~(74)(a)~~ (75)(a), its value is considered to be an amount less than \$500.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

~~(75)~~(76) "Vehicle" means any device for transportation by land, water, or air or by mobile equipment, with provision for transport of an operator.

~~(76)~~(77) "Weapon" means any instrument, article, or substance that, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

~~(77)~~(78) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 3. Section 45-5-222, MCA, is amended to read:

"45-5-222. Sentence enhancement -- offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who has pleaded guilty or nolo contendere to or who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) shall run consecutively to the sentence, except as provided in 46-18-222."

Section 4. Section 45-5-621, MCA, is amended to read:

"45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if the person fails to provide support that the person can provide and that the person knows the person is legally obliged to provide to a spouse, child, or other dependent.

(2) (a) A person commits the offense of aggravated nonsupport if the person has:

(i) ~~the offender has~~ left the state without making reasonable provisions for the support of a spouse, child, or other dependent; or

(ii) ~~the offender has~~ been previously convicted of the offense of nonsupport.

(b) For purposes of this section, "conviction" means a conviction, as defined in 45-2-101, in this state, conviction for a violation of a statute similar to this section in another state, or a forfeiture of bail or collateral deposited to secure ~~the defendant's~~ a person's appearance in court in this state or another state, which forfeiture has not been vacated.

(3) If a defense to the charge of nonsupport is inability to pay, the person's inability must be the result of circumstances over which the person had no control. In determining ability to pay, after an allowance for the person's minimal subsistence needs, the support of a spouse, child, or other dependent has priority over any other obligations of the person.

(4) When a person is ordered to pay support by a court or administrative agency with jurisdiction

to enter the order, the support order is prima facie evidence of the person's legal obligation to provide support.

(5) Payment records maintained by the court or administrative agency that issued the support order are prima facie evidence of the amount of support paid and the arrearages that have accrued.

(6) It is not a defense to a charge of nonsupport that any other person, organization, or agency furnishes necessary food, clothing, shelter, medical attention, or other essential needs for the support of the spouse, child, or other dependent.

(7) (a) Except as provided in subsection (7)(b) or (7)(c), a person convicted of nonsupport shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of nonsupport who has failed to provide support under a court or administrative order for 6 months or more or who has failed to provide support in a cumulative amount equal to or in excess of 6 months' support shall be fined not to exceed \$5,000 or be imprisoned in the state prison for a term not to exceed 2 years, or both.

(c) A person convicted of aggravated nonsupport shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(8) Before trial with the consent of the defendant, on entry of a plea of guilty or nolo contendere, or after conviction, instead of the penalty provided in subsection (7) or in addition to that penalty, the defendant may post a bond, undertaking, or other security. This security must be for a period of 2 years or, in the case of aggravated nonsupport, for a period of 10 years. The court shall fix the sum of the security in an amount sufficient to ensure payment of support by the defendant. After the security is posted, the court shall release the defendant on the condition that the defendant comply with any order for support. If there is no order for support, the court shall order the defendant to pay support to the spouse, child, or other dependent in an amount that is consistent with the defendant's ability to pay and, if applicable, the child support guidelines adopted under 40-5-209.

(9) The bond, undertaking, or other security posted pursuant to subsection (8) ~~must be~~ is forfeited if the defendant fails to pay support as ordered, and the court may proceed to try the defendant upon the original charge of nonsupport, sentence the defendant under the original plea or conviction, or enforce a suspended sentence.

(10) As part of any prosecution under this section, the court shall also order the ~~defendant~~ offender to make restitution to the spouse, the child's caretaker, or any other dependent or to the person or agency that provided support to the spouse, child, or other dependent. The amount of restitution is the sum of the arrearages payable under a support order or, if there is no support order, an amount determined reasonable by the court. The terms for payment of restitution must be determined by the court.

(11) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the ~~defendant~~ offender has failed to support. A bond, undertaking, or other security forfeited under subsection (9) must be paid to the person or agency entitled to receive support from the ~~defendant~~ offender.

(12) When ~~any~~ a payment of public assistance money has been made for the benefit of a child by the department of public health and human services under the provisions of Title 53, a representative of the department may sign a criminal complaint against the person obligated by law to support the child who received the public assistance.

(13) The court may order that a term of imprisonment imposed under this section be served in another facility made available by the county and approved by the sentencing court. The ~~defendant~~ offender, if financially able, shall bear the expense of the imprisonment. The court may impose restrictions on the ~~defendant's~~ offender's ability to leave the premises of the facility and require that the defendant follow the rules of that facility. The facility may be a community-based prerelease center as provided for in 53-1-203. The prerelease center may accept or reject ~~a defendant~~ an offender referred by the sentencing court."

Section 5. Section 45-8-212, MCA, is amended to read:

"45-8-212. Criminal defamation. (1) Defamatory matter is anything that exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to the person's or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than

6 months in the county jail or a fine of not more than \$500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further the interest or duty.

(4) A person may not be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty or nolo contendere."

Section 6. Section 46-1-202, MCA, is amended to read:

"46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Conviction" means a judgment or sentence entered upon a guilty or nolo contendere plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent

jurisdiction authorized to try the case without a jury.

(7) "Court" means a place where justice is judicially administered and includes the judge of the court.

(8) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(9) "Judge" means a person who is vested by law with the power to perform judicial functions.

(10) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(11) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(12) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(13) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(14) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(15) "Parole" means the release to the community of a prisoner by a decision of the board of pardons and parole prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and parole and the supervision of the department of corrections.

(16) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(17) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(18) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(19) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(20) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections upon direction of the court.

(21) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(22) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(23) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(24) "Sentence" means the judicial disposition of a criminal proceeding upon a plea of guilty or nolo contendere, verdict, or upon a verdict or finding of guilty.

(25) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(26) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(27) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(28) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(29) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(30) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators."

Section 7. Section 46-12-201, MCA, is amended to read:

"46-12-201. **Manner of conducting arraignment -- use of two-way electronic audio-video communication -- exception.** (1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if the defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which the defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and ~~his~~ the defendant's counsel, if any, can communicate privately, and so that the defendant and ~~his~~ the defendant's counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that ~~his~~ the defendant's counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(5) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a judge may not accept a plea of guilty or nolo contendere from a defendant who is not physically present in the courtroom."

Section 8. Section 46-12-204, MCA, is amended to read:

"46-12-204. **Plea alternatives.** (1) A defendant may plead guilty, ~~or~~ not guilty, or, with the

consent of the court and the prosecutor, nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) The court may not accept a plea of guilty or nolo contendere without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty or nolo contendere results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty or nolo contendere, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

(4) The court may not accept a plea of nolo contendere in a case involving a sexual offense, as defined in 46-23-502."

Section 9. Section 46-12-210, MCA, is amended to read:

"46-12-210. Advice to defendant. (1) Before accepting a plea of guilty or nolo contendere, the court shall determine that the defendant understands the following:

- (a) (i) the nature of the charge for which the plea is offered;
- (ii) the mandatory minimum penalty provided by law, if any;
- (iii) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and
- (iv) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;
- (b) if the defendant is not represented by an attorney, the fact that the defendant has the right to be represented by an attorney at every stage of the proceeding and that, if necessary, one will be appointed to represent the defendant;
- (c) that the defendant has the right:
 - (i) to plead not guilty or to persist in that plea if it has already been made;
 - (ii) to be tried by a jury and at the trial has the right to the assistance of counsel;
 - (iii) to confront and cross-examine witnesses against the defendant; and

(iv) not to be compelled to reveal personally incriminating information;

(d) that if the defendant pleads guilty or nolo contendere in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(e) that if the defendant's plea of guilty or nolo contendere is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty or nolo contendere the defendant waives the right to a trial; and

(f) that if the defendant is not a United States citizen, a guilty or nolo contendere plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

(2) The requirements of subsection (1) may be accomplished by the defendant filing a written acknowledgment of the information contained in subsection (1)."

Section 10. Section 46-12-211, MCA, is amended to read:

"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.

(1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant

that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty or nolo contendere plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, a disclosure of the agreement through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be a disclosure in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 11. Section 46-12-212, MCA, is amended to read:

"**46-12-212. Determining accuracy of plea.** (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.

(2) A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty or may, with the consent of the court and the prosecutor, enter a plea of nolo contendere to the offense if the defendant considers the plea to be in the defendant's best interest ~~and if a factual basis exists for the plea~~ and the court determines that there is a factual basis for the plea."

Section 12. Section 46-13-108, MCA, is amended to read:

"**46-13-108. Notice by prosecutor seeking persistent felony offender status.** (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant to 46-13-110.

(2) The notice must specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence.

(3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a hearing to determine if the allegations in the notice are true.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo contendere is given by the defendant."

Section 13. Section 46-13-109, MCA, is amended to read:

"46-13-109. Notice by prosecutor of other crimes, wrongs, or acts. (1) Except for good cause shown, if the prosecutor intends to use evidence of other crimes, wrongs, or acts pursuant to Rule 404(b), Montana Rules of Evidence, notice must be given at or before the omnibus hearing held pursuant to 46-13-110.

(2) The notice must specify the other crimes, wrongs, or acts and must include a statement as to the purpose for which the evidence is to be offered.

(3) The notice must be filed and sealed until the time of trial or until a plea of guilty or nolo contendere is entered by the defendant."

Section 14. Section 46-14-311, MCA, is amended to read:

"46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206."

Section 15. Section 46-16-103, MCA, is amended to read:

"46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty or nolo contendere.

(2) Questions of law must be decided by the court and questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-110(3)."

Section 16. Section 46-16-105, MCA, is amended to read:

"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before or after judgment, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 17. Section 46-17-203, MCA, is amended to read:

"46-17-203. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere may be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum

penalty provided by law that may be imposed upon acceptance of the plea.

(2) A plea of guilty or nolo contendere in a justice's court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

(3) For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an entry of a plea of guilty or nolo contendere in open court. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201."

Section 18. Section 46-18-104, MCA, is amended to read:

"**46-18-104. Definitions.** As used in 46-18-101, 46-18-104, 46-18-105, 46-18-201, and 46-18-225, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) "Crime of violence" means:

(a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(b) a crime in which the offender causes a serious bodily injury or death to a person other than ~~himself~~ the offender; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty or nolo contendere to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence."

Section 19. Section 46-18-201, MCA, is amended to read:

"46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict of guilty or a plea of guilty or nolo contendere, the court may:

(a) defer imposition of sentence, except as provided in 61-8-734 for sentences for driving under the influence of alcohol or drugs or as provided in 61-6-304, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

- (i) jail base release;
- (ii) jail time not exceeding 180 days;
- (iii) conditions for probation;
- (iv) payment of the costs of confinement;
- (v) payment of a fine as provided in 46-18-231;
- (vi) payment of costs as provided in 46-18-232 and 46-18-233;
- (vii) payment of costs of court-appointed counsel as provided in 46-8-113;
- (viii) with the approval of the facility or program, an order that the offender be placed in a community corrections facility or program as provided in 53-30-321;
- (ix) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, an order that the offender be placed in a prerelease center or prerelease program for a period not to exceed 1 year;
- (x) community service;
- (xi) home arrest as provided in Title 46, chapter 18, part 10;
- (xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society;

(xiii) payment of expenses for use of a judge pro tempore or special master as provided in 3-5-116;
or

- (xiv) any combination of the restrictions or conditions in subsections (1)(a)(i) through (1)(a)(xiii).
- (b) suspend execution of sentence for a period up to the maximum sentence allowed or for a period of 6 months, whichever is greater, for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence.

Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) impose a county jail or state prison sentence, as provided in Title 45, for the offense or commit the defendant to the department of corrections for a period not to exceed 5 years for placement in an appropriate correctional facility or program;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) with the approval of the prerelease center or prerelease program and confirmation by the department of corrections that space is available, order the offender to be placed in a prerelease center or prerelease program for a period not to exceed 1 year; or

(h) impose any combination of subsections (1)(b) through (1)(g).

(2) In addition to any penalties imposed pursuant to subsection (1), if the court finds that the victim of the offense has sustained a pecuniary loss, the court shall require payment of full restitution to the victim as provided in 46-18-241 through 46-18-249.

(3) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(4) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit. The court shall state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(5) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(6) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(7) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(8) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(9) In imposing a sentence on a defendant convicted of a sexual or violent offense as defined in 46-23-502, the court may not waive the registration requirement provided in Title 46, chapter 23, part 5.

(10) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in and complete the educational phase of the prison's sexual offender program. If the person is subject to the provisions of 45-5-512, the person shall also, as provided in 45-5-512, undergo medically safe medroxyprogesterone acetate treatment or its chemical equivalent or other medically safe drug treatment that reduces sexual fantasies, sex drive, or both, paid for by and for a period of time determined by the department of corrections. The period may not exceed the period of state supervision of the person.

(11) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program or a prerelease center or prerelease program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the court subsequently sentences the offender to a state prison, the court shall state the reasons why it did not select an alternative to imprisonment, based on the criteria contained in 46-18-225.

(12) If a felony sentence includes probation, the department of corrections shall supervise the defendant unless the court specifies otherwise.

(13) Except as provided in 46-18-222, a provision of this section that conflicts with 46-18-219 does not apply to a person sentenced under 46-18-219."

Section 20. Section 46-18-204, MCA, is amended to read:

"46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw ~~his~~ a plea of guilty or nolo contendere or may strike the verdict of guilty from the record and order that the charge or charges against ~~him~~ the defendant be dismissed. A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown."

Section 21. Section 46-18-231, MCA, is amended to read:

"46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict of guilty or a plea of guilty or nolo contendere, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed \$50,000."

Section 22. Section 46-24-203, MCA, is amended to read:

"46-24-203. Prompt notification to victims and witnesses of certain offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to the person's case, including:

- (a) the arrest of an accused;
- (b) the release of the accused pending judicial proceedings;
- (c) the crime with which the accused has been charged, including an explanation of the elements of the offense when necessary to an understanding of the nature of the crime;
- (d) proceedings in the prosecution of the accused, including entry of a plea of guilty or nolo contendere and the setting of a trial date;
- (e) if the accused is convicted or pleads guilty or nolo contendere, the function of a presentence report; the name, office address, and telephone number of the person preparing the report; and the convicted person's right of access to the report, as well as the victim's right under 46-18-115 to present a statement in writing or orally at the sentencing proceeding and the convicted person's right to be present at the sentencing proceeding and to have access to the victim's statement;
- (f) the date, time, and place of any sentencing hearing, the sentence imposed, and the term of imprisonment, if imposed; and
- (g) the right under 46-24-212 of a victim of a felony offense to receive information from the department of corrections concerning the convicted person's incarceration.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense or a misdemeanor offense involving actual, threatened, or potential bodily injury to the victim, a relative of ~~such~~ a victim or witness who is a minor, or a relative of a homicide victim."

Section 23. Section 53-30-303, MCA, is amended to read:

"53-30-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Community corrections board" means a community corrections board as provided in 53-30-312.

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is established by a local or tribal government and operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(b) provides programs and services to aid offenders in:

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

(3) "Department" means the department of corrections created in 2-15-2301.

(4) "Nongovernmental agency" means a person, private, nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

(5) "Offender" means a person who has entered a plea of guilty or nolo contendere or has been convicted of a criminal offense.

(6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

(7) "Unit of local government" means a county, city, town, or city-county consolidated government."

Section 24. Section 61-11-203, MCA, is amended to read:

"61-11-203. Definitions. As used in this part, the following definitions apply:

(1) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty or nolo contendere, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle ~~which that~~ is prohibited by law, ordinance, or administrative order.

(2) "Habitual traffic offender" means any person who within a 3-year period accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) deliberate homicide resulting from the operation of a motor vehicle, 15 points;

(b) mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault, 12 points;

(c) any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more, 10 points;

(e) operating a motor vehicle while the license to do so has been suspended or revoked, 6 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, as defined in 61-7-105, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of \$250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 5 points;

(j) any of the mandatory motor vehicle liability protection offenses under 61-6-301 and 61-6-302, 5 points;

(k) operating a motor vehicle without a license to do so, 2 points (this subsection (k) does not apply to operating a motor vehicle within a period of 180 days from the date the license expired);

(l) speeding, 3 points;

(m) all other moving violations, 2 points.

(3) There may not be multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only the number of points for the specific conviction carrying the highest points is chargeable against that defendant.

(4) "License" means any type of license or permit to operate a motor vehicle."

Section 25. Section 87-1-112, MCA, is amended to read:

"87-1-112. Finding required. Before restitution may be ordered pursuant to 87-1-111, the finder

of fact at trial or the court upon entry of a guilty or nolo contendere plea ~~must~~ shall find that ~~such~~ the illegal killing or possession was done knowingly or purposely as defined in 45-2-101. This finding is not required for state reimbursement under 87-1-111 when bond or bail is forfeited."

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